

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE, N.C.

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MEDICAL SPECIALTIES, INC. v. S. DISTRICT COURT
W. DIST. OF N.C.

Plaintiff,
v.
WEBER ORTHOPEDIC, INC.,
Defendant.

Civil Action No. 3:00CV544-MV

ANSWER AND COUNTERCLAIM

Weber Orthopedic, Inc. ("Weber"), files this Answer and Counterclaim in response to Plaintiff's Complaint for Patent Infringement, filed November 8, 2000 (hereinafter "the Complaint").

For its Answer, Weber answers the paragraphs of the Complaint as follows:

1. Weber admits paragraph 1 of the Complaint, but expressly denies that it infringes the patent at issue.
2. Weber is without knowledge or information sufficient to form a belief as to the truth or falsity of paragraph 2 of the Complaint, and therefore denies paragraph 2 of the Complaint.
3. Weber denies that its products are "sold and used continuously and systematically within this judicial district." The remaining allegations of paragraph 3 of the Complaint are admitted.

4. Weber is without knowledge or information sufficient to form a belief as to the truth or falsity of paragraph 4 of the Complaint, and therefore denies paragraph 4 of the Complaint.

5. Weber admits that a copy of U.S. Patent No. 5,067,486 was attached to the Complaint. Weber is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 5 of the Complaint, and therefore denies the remaining allegations of paragraph 5 of the Complaint.

6. Weber admits that the Abstract of the patent attached to the Complaint states that “[a]n ankle stabilizing appliance is disclosed which comprises a boot-like body member, and a pair of stabilizing straps ...” and that the Background of the patent attached to the Complaint states that one of the objects is “to provide an ankle stabilizing appliance” Weber is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 6 of the Complaint, and therefore denies the remaining allegations of paragraph 6 of the Complaint.

7. Weber admits that it sells products under the name “Webly Ankle” and that a copy of a photograph of one of Weber’s products was attached to the Complaint. Weber denies the remaining allegations of paragraph 7.

8. Denied.

9. Any matter alleged in the Complaint that is not expressly admitted by Weber above is hereby denied.

Further, Weber states the following defenses:

First Defense – No Infringement

10. No product or process made, used, imported, sold, or offered for sale by Weber infringes the '486 patent.

Second Defense – Invalidity

11. The '486 patent is invalid for failing to meet the requirements of title 35 of the United States Code.

Third Defense – Estoppel

12. Plaintiff is estopped by the doctrine of prosecution history estoppel from alleging that Weber infringes the '486 patent.

**COUNTERCLAIM FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT AND INVALIDITY**

Weber Orthopedic, Inc. ("Weber") brings this counterclaim against Medical Specialties, Inc. ("Medical Specialties") in the above-referenced action. Weber avers as follows:

The Parties

13. Weber is a California corporation having a principal place of business in Santa Paula, California.

14. In its complaint, Medical Specialties alleges that it is a corporation duly organized and existing under the laws of the State of North Carolina, having a principal place of business at 4600 Lebanon Road, Charlotte, NC 28227.

Jurisdiction and Venue

15. This counterclaim is brought under the Federal Declaratory Judgments Act, Title 28, United States Code, Sections 2201 and 2202.

16. Subject matter jurisdiction exists under Title 28, United States Code, sections 1338 and 1331. Medical Specialties has submitted itself to the jurisdiction of this Court by, among other things, filing this lawsuit. Venue is proper in this Court.

Cause of Action for Declaration of Non-Infringement and Invalidity

17. Medical Specialties claims to be the assignee of U.S. Patent No. 5,067,486 (“the ‘486 patent”) and to have the right to sue and recover damages for infringement of the ‘486 patent.

18. Medical Specialties claims in its Complaint that Weber is infringing the ‘486 patent.

19. Weber does not infringe the ‘486 patent.

20. Each and every claim of the ‘486 patent is invalid.

21. An actual and justiciable controversy exists between Weber and Medical Specialties as to the non-infringement and invalidity of the ‘486 patent.

WHEREFORE, Weber respectfully prays that judgment be entered in its favor against Medical Specialties as follows:

- A. That the Complaint of Medical Specialties be dismissed with prejudice;
- B. That U.S. Patent No. 5,067,486 be adjudged and declared invalid;
- C. That it be adjudged and declared that no product or process made, used, sold, or offered for sale by Weber infringes the ‘486 patent;
- D. That Weber be awarded its costs, including reasonable attorneys’ fees, incurred in defending this action and incurred in pursuing the counterclaim in this action; and
- E. That Weber be awarded such other and further relief as the Court may deem just and proper.

FURTHER, Weber respectfully requests a jury trial on all issues so triable.

Respectfully submitted, this the 21st day of February, 2001.

Steven Gardner / NDB

Steven Gardner

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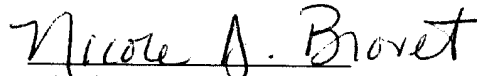
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CERTIFICATE OF SERVICE

I, Nicole D. Brovet, hereby certify that on this date I served the foregoing ANSWER and COUNTERCLAIM on counsel of record by causing a copy thereof to be deposited in the United States mail, first-class postage prepaid, and addressed as follows:

**William M. Atkinson, Esq.
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This the 21st day of February, 2001.


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